REMARKS

Responsive to the Official Action mailed March 12, 2003, applicants have further revised the claims of their application in an earnest effort to place this case in condition for allowance. Independent claim 1 has been amended. Reconsideration is respectfully requested.

Applicants gratefully acknowledges the Examiner's reconsideration of her rejection under 35 U.S.C. §112.

In the Action, the Examiner has maintained her rejection of the pending claims under 35 U.S.C. §103, with reliance upon Japanese Patent No. 08246232, to Tetsuya et al., in view of U.S. Patent No. 3,454,519, to Hulse et al. Applicants must respectfully traverse the rejection, since it is respectfully maintained that applicants' invention, which the Examiner has acknowledged is novel and unique, is neither taught nor suggested by the cited references, even when considered in light of each other.

As discussed previously by applicants, the teachings of the principal Tetsuya et al. reference are specifically *limited* to production of nonwoven fabrics from cut, staple length fibers. In the Action, the Examiner states that the Tetsuya et al. reference is "not limited to those types of fibers since there is nothing on record that would fairly suggest Tetsuya et al. teaching away from other types of fibers, such as continuous filaments."

Applicants must respectfully disagree with this statement. The fact of the matter is there is nothing on the record that would suggest that Tetsuya et al. contemplates *anything other than cut staple length fibers*. It is respectfully maintained that to rely upon applicants' disclosure to modify the limited teachings of a reference, in absence of any

other prior art of record which would suggest such a modification, cannot provide the basis for a proper prior art rejection under 35 U.S.C. §103. Applicants respectfully refer to M.P.E.P. Section 2142, citing *In Re Vaeck* (citations omitted), stating:

> Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based on applicant's disclosure.

As stated in M.P.E.P. Section 2143.01, citing *In Re Mills* (citation omitted):

> The mere fact that the references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (emphasis in original).

In the Action, the Examiner has stated that notwithstanding the deficiencies in the teachings of Tetsuya et al.:

> The choice whether to cut, crimp, spun, or meltblown fibers is [a] function of the desired end-use. Tetsuya et al., in this case happens to teach a carded nonwoven, but one skilled in the art would readily be able to tailor the type of nonwoven fabricated.

It is respectfully maintained this is inconsistent with the specific guidelines provided by the M.P.E.P., Section 2143.01, which states, citing *ex parte Levengood* (citation omitted);

> A statement that modifications of the prior art to meet the claimed invention would have been "'well within the ordinary skill of the art at the time the claimed invention was made'" . . . is not sufficient to establish a *prime facie* case of obviousness without some objective reason to combine the teachings of the references.

This M.P.E.P. Section goes on to cite the decision of the Court of Appeals for the Federal Circuit, in *Al-Site Corp. v. VSI International, Inc.,* (citations omitted), which stated:

> The level of skill in the art cannot be relied upon to provide the suggestion to combine references.

In applicants' previous responses, the fundamental differences between spunbond fabrics formed from continuous filaments, in accordance with the present invention, and those formed from staple length fibers, to which the teachings of Tetsuya et al. are limited, were discussed, but merit emphasis. Because fabrics formed from staple length fibers must be carded, and otherwise consolidated to form fibrous fabric structures, the resultant fabrics typically cannot be formed at the same low basis weights as can be formed from spunbond fabrics. Spunbond fabrics may be formed to be very thin, with the spunbond process lending greater fabric uniformity. Because of the costs typically associated with consolidation, carding, and similar processes required for formation of staple length nonwoven fabrics, spunbond fabrics formed in accordance with the present invention can be much more cost-effective and economical.

In the Action, the Examiner has stated that her position is: "there is no teaching away that the polypropylene composition of Tetsuya et al. could not be extruded in continuous filaments". Applicants must respectfully disagree. There is simply no teaching in either of the cited prior art references of forming a filamentary nonwoven spunbond fabric, in accordance with the presently pending claims.

In the Action, the Examiner has characterized this *absence of teachings* of the present invention as "[motivation] to fabricate a nonwoven fabric comprising continuous

filaments". Applicants respectfully maintains this is simply inconsistent with the guidelines of the M.P.E.P. for evaluating obviousness.

Applicants understand the Examiner to be suggesting that one skilled in the art would interpret the Tetsuya et al. disclosure to teach or suggest applicant's claimed fabric structure. In accordance with M.P.E.P. Section 2144.03, applicants respectfully challenge this interpretation of the reference, and respectfully request that the Examiner provide documentary evidence that one skilled in the art would, in fact, interpreted the teachings in such a manner. As provided in the Manual:

> Furthermore, the applicant must be given the opportunity to challenge the correctness of such assertions and allegations. "The facts so noticed serve to 'fill the gaps' which might exist in the evidentiary showing" and should not comprise the principal evidence upon which a rejection is based. (Citations omitted.)

Applicants respectfully traverse this extension of the limited teachings of the Tetsuya et al. reference, and respectfully request documentation of this position by the Examiner to afford applicants the proper basis for appeal.

In the Action, the Examiner noted that the claims were not considered to be commensurate in scope with applicants' arguments. Applicants have revised their claims to specify that the claimed fabric is "spunbond," but it is respectfully noted that applicants' claims previously specified that the fabric was formed form "filaments," understood by those skilled in the art to constitute substantially continuous filaments as results from the

spunbond process. While meltblown constructs to which the Examiner refers are known, inevitably those skilled in the art refer to "meltblown *fibers*," since attendant to formation, the filaments from which such fibers are formed are broken into discrete lengths to form the meltblown fibers (sometimes referred to as microfibers). These are clearly distinct from substantially continuous *filaments*.

In the Action, the Examiner has stated: "It is the position of the Examiner that the invention is in the polypropylene composition." It is respectfully noted that this is simply inconsistent with the specific language of applicants' claims. Applicants' claims specifically are directed to a melt extruded *nonwoven fabric*. The claims specify formation of the fabric from *thermally bonded polypropylene filaments*. The claims further specify a specific blend of fatty acid amides provided in the polypropylene from which the filaments are formed. Finally, the claims specify a specific *bending resistance*. Applicants respectfully questions how a "polypropylene composition" can be equated to the recited melt-extruded, thermally-bonded, soft, nonwoven fabric, having a specified bending resistance.

In the Action, the Examiner refers to Section 0017 of the Tetsuya et al. reference, the translation of which uses the words "very flexible." The Examiner goes on to state: "The claimed bending resistant property value would inherently be present as a function of the type of fiber provided."

Again, applicants must respectfully traverse this interpretation of the principal Tetsuya et al. reference. First, applicants are unaware of *any specific teaching* in the Tetsuya et al. reference of the claimed bending resistance. Considering that the principal

Tetsuya et al. reference *does not* teach formation of a thermally-bonded spunbond polypropylene fabric, and *does not* teach applicant's specified fatty acid additive combination, it is respectfully submitted that it is reading beyond the limited teachings of this reference to suggest that applicant's claimed bending resistance would be "inherent" in this reference's teachings.

Moreover, just prior to that section of Tetsuya et al. that the Examiner makes reference to, discussion of test fabrics as set forth, with the translation stating "it classified *into four stages* which show the feeling of a heat-weld nonwoven fabric below by the tactile feeling touch."

Only one of the four stages makes reference to "very flexible," and goes on to characterize this "stage" as "there is no feeling of slime, and there is a tactile feeling like the hide of * * * *." The translation note shows that one word was not translatable. Nevertheless, the Examiner has based her rejection on this vague characterization of but "one stage" of test fabric classification. To suggest that applicant's claimed bending resistance is "inherent" from such a limited disclosure hardly affords the applicant "the opportunity to challenge the correctness of such assertions and allegations" as specifically contemplated by the M.P.E.P.

In the Action, the Examiner has held that "where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art." Applicants must respectfully submit that the "general conditions of a claim" *are not disclosed* in the prior art. *Only applicants own disclosure* teaches the formation of thermally bonded, polypropylene spunbond fabric having a specified fatty

acid composition to achieve a specified level of bending resistance. As noted, the vague classifications of Tetsuya et al. which does not contemplate spunbond fabric formation, cannot provide a proper basis for rejecting claims specifying a particular bending resistance. As noted above, there are fundamental differences between the formation of a fabric from staple length fibers, to which the Tetsuya et al. reference is specifically limited, and spunbond fabric formation. It thus cannot be stated with any degree of certainty whatsoever that the vague reference to "very flexible" in Tetsuya et al. would at all teach or suggest applicant's claimed bending resistance for spunbond polypropylene fabric. Moreover, the stated purpose of the Tetsuya et al. document is to:

> Obtain a thermally-fusible fiber not having a waxy feel but having a dry and soft skin touch as a single layered thermally-fiber easy in the production, and having a high fusion strength even fused at a relatively low temperature.

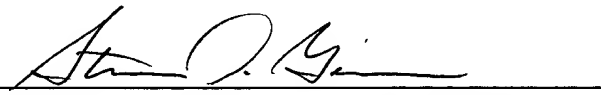
Applicants have previously noted that the secondary Hulse et al. patent contemplates the use of fatty amides for polypropylene fibers or filaments to provide lubrication which acts to "facilitate the freedom of movement of the yarn itself which may, in turn, permit easy recovery to designated, pre-set dimensions." (Column 2, lines 3-6.) Applicant's respectfully maintain this patent contemplates the use of the fatty acid amide additive to obtain a ductile improvement based on the surface lubrication of the component fibers, allowing the resulting yarns the ability to slip or slide against one another. In contrast, the present invention contemplates use of a fatty acid amide blend to

achieve tactile softness, and a claimed level of ductile softness, in a *thermally-bonded* spunbond nonwoven fabric construct.

It is also noted, Hulse et al. fails to teach or suggest applicant's specifically claimed fatty acid amide blend, where the amount of stearamide is greater than the amount of erucamide. In accordance with M.P.E.P. Section 2143.03, all claim limitations must be taught or suggested by the prior art. It is respectfully maintained that not only does the principal Tetsuya et al. reference clearly fail to teach or suggest applicant's specifically recited nonwoven fabric construct, the secondary Hulse et al. reference completely fails to overcome the deficiencies in the teachings of the principal reference.

In summary, applicants must respectfully maintain that the pending claims are patentably distinct from the prior art. Accordingly, formal allowance of claims 1-6 is respectfully solicited. Should the Examiner wish to speak with applicants' attorneys, they may be reached at the number indicated below.

Respectfully submitted,

By 

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CERTIFICATE OF MAILING

I hereby certify that this Amendment is being deposited with the United States Postal Service with sufficient postage at First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on **June 16, 2003.**